

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555 (JMP)

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5 In the Matter of:

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7 LEHMAN BROTHERS HOLDINGS, INC., ET AL,

8

9 Debtors.

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13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York 1004-1408

16

17 July 30, 2013

18 11:01 AM

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20 B E F O R E :

21 HON JAMES M. PECK

22 U.S. BANKRUPTCY JUDGE

23

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1 Hearing re: Motion of Dr. H.C. Tschira Beteiligungs GmbH &
2 Co. KG and Klaus Tschira Stiftung GGmbH to Withdraw Claim
3 Numbers 32395 and 22671 Pursuant to Rule 3006 of the Federal
4 Rules of Bankruptcy Procedure [ECF No. 38809]

5
6 A. LBHI's Opposition to Claimants' Motion to Withdraw
7 Claims 32395 And 22671 Pursuant to Rule 3006 of the
8 Federal Rules of Bankruptcy Procedure [ECF No. 38975]

9
10 B. Declaration of Jayant W. Tambe in Support of LBHI's
11 Opposition to Claimants' Motion to Withdraw Claims
12 32395 And 22671 Pursuant to Rule 3006 of the Federal
13 Rules of Bankruptcy Procedure [ECF No. 38976]

14
15 C. Declaration of Ines Pöschel in Support of LBHI's
16 Opposition to Claimants' Motion to Withdraw Claims
17 32395 And 22671 Pursuant to Rule 3006 of the Federal
18 Rules of Bankruptcy? Procedure [ECF No. 38977]

19
20 D. Declaration of Jonathan Nash QC in Support or LBHI's
21 Opposition to Claimants' Motion to Withdraw Claims
22 32395 And 22671 Pursuant to Rule 3006 of the Federal
23 Rules of Bankruptcy Procedure [ECF No, 38979]

1 E. Declaration of Daniel J. Ehrmann in Support of LBHI's
2 Opposition to Claimants' Motion to Withdraw Claims
3 32395 And 22671 Pursuant to Rule 3006 of the Federal
4 Rules of Bankruptcy Procedure [ECF No. 38979]
5

6 F. Reply in Support of the Motion of Dr. H.C. Tschira
7 Beteiligungs GmbH & Co. KG and Klaus Tschira Stiftung
8 GGmbH to Withdraw Claim Numbers 32395 and 22671
9 Pursuant to Rule 3006 of the Federal Rules of
10 Bankruptcy Procedure [ECF No. 39052]
11

12 G. Declaration of George A. Zimmerman in Support of the
13 Motion of Dr. H.C. Tschira Beteiligungs GmbH & Co. KG
14 and Klaus Tschira Stiftung GGmbH to withdraw Claim
15 Numbers 32395 and 22671 Pursuant to Rule 3006 of the
16 Federal Rules of Bankruptcy Procedure [ECF No. 39053]
17

18 H. Declaration of Bernd Kammerlander in Support of the
19 Motion of Dr. H.C. Tschira Beteiligungs GmbH & Co. KG
20 and Klaus Tschira Stiftung GGmbH to withdraw Claim
21 Numbers 32395 and 22671 Pursuant to Rule 3006 of the
22 Federal Rules of Bankruptcy Procedure [ECF No. 39054]
23

24 Hearing Re: Status

25 Transcribed by: Melissa Looney

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1 P R O C E E D I N G S

2 THE COURT: Let's proceed. It's your motion? Mr.
3 Zimmerman, does the water bottle indicate you plan to talk
4 for a very long time?

5 MR. ZIMMERMAN: I dry out quickly, but with that
6 hint, I'll talk fast.

7 Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. ZIMMERMAN: It's George Zimmerman representing
10 KTS. Thank you for hearing these on short notice.

11 This is KTS' motion to withdraw its proof of
12 claim. It would be with prejudice against ability to ever
13 bring any claim under the guarantee against LBHI in this or
14 any other court and without prejudice to continue its
15 litigation unfettered in Switzerland against LBF.

16 THE COURT: Can I ask a very basic threshold
17 question?

18 MR. ZIMMERMAN: Yes.

19 THE COURT: This is a question really for both
20 sides. Assuming for the sake of discussion that the only
21 thing that the order said was, quote, ordered that proofs of
22 claim numbers 32395 and 22671 are withdrawn with prejudice
23 period full stop. And none of your without prejudice were
24 included and none of the particulars requested by LBHI were
25 included. And it simply said withdrawn with prejudice, how

1 would you be adversely affected if at all?

2 MR. ZIMMERMAN: I believe that the only potential
3 issue would be if LBF or LBHI were to try to argue in the
4 Swiss proceedings that that was somehow with prejudice that
5 caused the dismissal as a matter of law without litigation
6 of the Swiss proceedings or the opposition to the settlement
7 agreement. That would be the only conceivable way.

8 How would Swiss Court -- in the U.S. typically --
9 and I'm not familiar with Swiss law, U.S. typically the
10 collateral estoppel effect of your order, typically the
11 other court would look to how this Court would interpret
12 that. What the Swiss rules are, I don't know. So I'm not
13 sure at all subject to what I said that it would -- that it
14 would prejudice us.

15 THE COURT: Okay.

16 MR. ZIMMERMAN: So with that, let me just briefly
17 tell you where we are. As you know, LBHI was the guarantor
18 of the underlying ISDA agreements between KTS -- the KTS
19 enteritis and LBF. The exclusive jurisdiction for KTS to
20 assert its claim in LBF is in the Swiss proceedings, which
21 they did and there were full evidentiary submissions by KTS
22 and LBF is shortly to follow. This was strictly a claim on
23 the guarantee.

24 You know the relief we want.

25 THE COURT: Yes.

1 MR. ZIMMERMAN: You know LBHI opposes it, you know
2 the relief they want. They want you to make findings based
3 on evidence, in quotes, that was submitted after KTS moved
4 to withdraw -- affidavits that were never subjected to
5 discovery, deposition, cross-examination or full briefing.
6 And they want to use those findings for the purposes I just
7 talked about, to bar -- to argue in Switzerland that these
8 findings would somehow preclude KTS from pursuing its claims
9 against LBF and pursuing its objection to that settlement
10 agreement.

11 There is no case that they cite -- no case that
12 we've seen where a federal judge enters findings based on
13 evidence that was never litigated beforehand. When we were
14 here at the stay proceeding, we specifically had this
15 dialogue where our theory of the stay was the threshold
16 issue first, in the Swiss case is English law and the
17 parties disputed English law governed the ISDA agreement.

18 What we proposed and what you counter proposed in
19 more direct language was that all of that may be true, but
20 the Section 562 issue is present uniquely in this Court.
21 It's a concept of U.S. Bankruptcy law. It will never be
22 litigated in the Swiss proceeding. And even if KTS prevail
23 -- if KTS loses in Switzerland, it's over. If KTS -- even
24 if it prevails under English law, you still have to decide
25 two things.

1 Whether the theory of KTS advocated under English
2 law is consistent or inconsistent with 562. And if the
3 latter, if it's inconsistent and you conclude that there was
4 a commercially reasonable determinant of value as of
5 September 15, that's the date LBHI advocates. Then you
6 would presumably preclude that -- you would make whatever
7 conclusions you do.

8 And the dialogue -- because this is important as
9 to the scope of what we were here for -- in the transcript,
10 and we attached the full transcript to our papers. We
11 didn't want to excerpt anything.

12 THE COURT: I read it. Thank you.

13 MR. ZIMMERMAN: Okay.

14 THE COURT: So feel free to highlight what you
15 want to highlight.

16 MR. ZIMMERMAN: Thank you, Judge. At pages 30 and
17 31 of the transcript you said, I view what's going on in
18 Switzerland is not directly relevant to the claim resolution
19 process in this Court, although you've pointed out -- that
20 was referring to me -- that if the Tschira entities are
21 unsuccessful in the case against LBF in Switzerland, claims
22 here go away. If you are successful, the 562 issue can
23 effectively be revisited then with reference to the
24 guarantee claim, which is what I just said.

25 It's also possible we can flip that on its head

1 and I can preemptively deal with the guarantee issue under
2 562, determine you're either right or wrong with respect to
3 the existence of commercially reasonable determinants of
4 value as of October 16th of September 15th as argued by the
5 Debtor. And you can either win or lose here.

6 And then you said this, if you lose here, that
7 doesn't preclude your ability to argue against LBF in the
8 Swiss proceeding, that my decision here was predicated on
9 applicable bankruptcy law that isn't extend for their
10 purposes.

11 THE COURT: I think I said that rather well.

12 MR. ZIMMERMAN: And since it's consistent with
13 opposition, I agree.

14 And the other thing you were concerned about, the
15 reason you wanted to speed it up was because the fact that
16 the claim here had, quote, a significant impact on reserves
17 in this case, because LBHI had to set aside a reserve for
18 this case. That's gone. The reserve is gone. We're going
19 to drop our claim. We're never suing LBH under the
20 agreement.

21 So we modeled our order precisely along the lines
22 as what you just meant in that quote. They want to go
23 further. They want to say, no you should use this -- take
24 the occasion to make findings on unvetted evidence that
25 would destroy -- that they would argue would destroy the

1 ability in Switzerland. There is no precedent for that.
2 There's no case to that. And the test is Rule 3006, which
3 is also -- it's the analog to Federal Rule 41(a) and they're
4 kind of construed the same.

5 The test is, there's a policy towards granting
6 withdrawals to resolve conflicts. But they can be
7 conditioned if the Court concludes that the withdrawal of
8 the claim would somehow prejudice the Defendant.

9 The only prejudice they have, they argue is that
10 well, there's the subjection by KTS to that settlement
11 agreement. KTS is objecting in Switzerland, which is
12 holding up a potential distribution, which is true. There
13 is an objection. They have the right to do that.

14 But if you were to make a finding that allows the
15 elimination of that objection by ruining their standing as
16 creditor, well then we can speed up the distribution.

17 There's two problems with that. That's not --
18 assuming that's legal prejudice -- which it's not -- that's
19 not caused by the withdrawal of the claim. Had we never
20 brought the claim, obviously KTS could have objected to the
21 settlement agreement. So withdrawing the claim just puts
22 the parties back where they were before the claim was
23 brought and that's what legal prejudice means.

24 And we cited -- the cases that have actually
25 looked at this issue where a party wants to withdraw a claim

1 and the defendant wants to try to condition that on
2 preventing the withdrawing party from suing other people in
3 the same claim. All of the cases -- all of the cases that
4 have looked at that -- uniformly hold that the withdrawal
5 will be with prejudice as against that defendant, you can
6 never sue that defendant affirmatively again, but without
7 prejudice to your ability to sue third parties.

8 And even if it means -- and in all those cases, or
9 most of the cases -- the defendants argued, well if you
10 permit the claimant to sue third parties that are related
11 to the defendant and he wins, those defendants then have an
12 indemnification contribution claim back against the debtor.
13 Now the Courts recognize that and say it doesn't matter,
14 because had they never brought the claim they could have
15 sued third parties and those third parties would have had
16 whatever rights they have. So there's no cause and effect
17 and every case that has looked at this has concluded that
18 one way. There is no case where a judge has made findings
19 based on completely unvetted evidence. They're asking you
20 to go into uncharged territory without absolutely no reason
21 to do that.

22 One other point, if I may. And it's -- it is not
23 germane but there is a constant theme that the tactics in
24 quote, that KTS is using is somehow were improper. Let me
25 address that in two ways.

1 Think about this. The only harm as I just talked
2 about is that settlement agreement. KTS filed its objection
3 in 2009. There was no settlement agreement. The settlement
4 agreement was in 2013.

5 THE COURT: You said filed its objection. Do you
6 mean filed its claim?

7 MR. ZIMMERMAN: Sorry. Strike -- thank you, Judge.
8 Filed its proof of claims here in 2009. Thank you. Had LBHI
9 moved to overrule those claims earlier, either we would have
10 litigated that, we would have withdrawn it, there was no
11 issue about the settlement agreement. There was no
12 settlement agreement. LBHI chose not to -- to waive.
13 That's -- we don't impugn their motives. Unlike them, every
14 time KTS makes a strategic decision, it's wrong, it's evil,
15 it's sinister. We're not saying that. A debtor has a
16 million things they have to prioritize. We get it.

17 They decided for whatever legitimate reason, even
18 if it's legitimate, tactically to wait four years and that's
19 their right. You have a right to make tactical decisions.
20 But when you make a tactical decision, you've got to live
21 with both the benefits and the burdens. During that four
22 year interim period, the facts on the ground changed having
23 nothing to do -- totally not within the control of KTS.
24 There was a settlement reached.

25 Now, having waited all this time to try to move --

1 to overrule the claim, they are latching onto something that
2 they could have totally avoided had they moved earlier. So
3 there's no way KTS is responsible even if that was legally
4 cognizable prejudice, which the cases say it's not.

5 Final point before I sit down.

6 THE COURT: Before you make a final point.

7 MR. ZIMMERMAN: Yes.

8 THE COURT: Let's talk a little bit more about the
9 point you just articulated, which is the notion of your
10 client -- and I'm not sure if it's KTS or Tschira or how to
11 properly name them, but we'll use them interchangeably. The
12 notion is that your client is a shameless opportunist and is
13 using the proceedings in Switzerland as a means to unfairly
14 extract value that you are not entitled to as a matter of
15 law because any reasonable person looking either at English
16 law or at Section 562 would conclude that you are due zero
17 dollars and in fact may owe dollars to the estate.

18 MR. ZIMMERMAN: Uh-huh.

19 THE COURT: And you are exercising these rights at
20 a particularly critical time to the life of both the estates
21 in Switzerland and here by threatening as the last person
22 standing a settlement that is demonstrably beneficial to all
23 parties in interest. And so without saying anything
24 uncharitable, you appear to be at a minimum, opportunistic
25 and at a maximum, something I won't say. But you know what

1 I'm thinking. You can read my mind and it's the word that
2 starts with a T.

3 MR. ZIMMERMAN: Let me respond to that. There is
4 -- first of all, let's look at the timing. LBF didn't
5 publish its list of creditors that admitted -- let's call
6 them KTS if that's okay with you -- until I believe March of
7 2013. That's when KTS objected -- started its claim in
8 Switzerland saying, I should be a creditor. So before that,
9 there was no issue. We know the timing of the settlement
10 agreement.

11 If the argument is that KTS and this timing was
12 totally in control of LBF when it published its list of
13 creditors and LBF and LBHI when to settle. If the claim is
14 that somehow exercising what they perceive to be legitimate
15 rights is increasing their leverage first as against LBHI,
16 that's gone. We're withdrawing the claim, there's no
17 negotiation, they won. So that can't possibly be right.

18 To the extent -- I'm hoping you were paraphrasing
19 the Lehman's argument that a reasonable person could do
20 nothing but conclude that as a matter of English law under
21 the ISDA Or 562 or whatever law you want, that there's no
22 merit to the position, presumably if Swiss courts are
23 reasonable and they will demolish KTS and call them whatever
24 they want and issue whatever appropriate sanction is
25 applicable.

1 But on that point, let me now get to the point --
2 the last point I wanted to make before I sit down because I
3 think it goes at least tangentially to your point. One of
4 the things they argued is that obviously there was a
5 commercially reasonable determinative value as of September
6 15th, because there are these quotes, the three quotes,
7 Mediobanca, Golden Sachs, Lehman Brothers. I'm sorry, JP
8 Morgan. That somehow KTS tried to hide and that shows an
9 inconsistency in positions that KTS is trying to use two
10 courts against each other.

11 Let me just address that briefly, because it goes
12 to the -- it's not legally relevant, it goes to the
13 atmospherics, but it's important. We have those affidavits
14 are attached to an exhibit that Lehman put in. I'm sorry;
15 the valuations are attached to an affidavit Lehman put in.
16 Not only were those valuations not hidden, the way they were
17 filed by KTS in the Swiss proceeding. And they were filed
18 to show -- and again, just to refresh your recollection,
19 KTS' position is that under English law, the valuation date
20 is the date when you find out -- you're allowed to try to
21 enter into an exact replacement transaction, which in our
22 case was collateralized with 59 million shares. It wasn't
23 until October 16th they found out they were not going to get
24 the collateral back and KTS' position is that under English
25 law, that's the valuation date. And obviously LBHI

1 disagrees both under English law and I think more
2 importantly for your purposes under Section 562. And they
3 say, well you obviously got these valuations, so it's
4 commercially reasonably determinant as of September 15th.

5 There are two problems with that. May I just hand
6 up those exhibits just to walk you through from one --

7 THE COURT: You can hand up whatever you like.

8 MR. ZIMMERMAN: Thank you.

9 (Pause)

10 THE COURT: I've seen these before.

11 MR. ZIMMERMAN: Yes. They are Exhibits 1, 2 and 3
12 to -- I hope I'm pronouncing these right, the Poschel
13 affidavit -- P-O-S-C-H-E-L submitted by LBHI.

14 THE COURT: Right.

15 MR. ZIMMERMAN: The Mediobanca valuation which is
16 the first one is for a collateralized transaction, which is
17 the point KTS made in Switzerland because they say we
18 couldn't get -- we wouldn't be able to do a collateralized
19 transaction until October 16th. But forget that. Here's
20 what I want to get to.

21 If you look at page 1, they summarize the nature
22 of the transaction. It has four tranches, two variable
23 forward sale, variable forward purchase. And at the bottom
24 of that first page, they explain that in the variable
25 forward sale transaction, KTS is long a European put option

1 and short a European call option. Okay. If you go to page
2 5 -- I'm sorry page 6. Sorry, Your Honor. Mediobanca
3 describes the second part of it which is the variable
4 forward purchase. In those two transactions, KTS is
5 effectively short, but down an input option with rebate and
6 long down in call in (ph) option on shares. That's the
7 transaction.

8 If you look at the next exhibit, Exhibit 2, which
9 is the Goldman Exhibit, it's the Goldman quote and on its
10 face you can see when you compare it to the description of
11 the transaction in Mediobanca. Goldman only values the
12 variable forward sale. That's when KTS was long to put in
13 short. They don't value the variable forward purchase. If
14 they -- it's not a valuation. They weren't giving -- and if
15 you want to make implications -- as of September 15th is
16 because they couldn't come up with one.

17 And the third exhibit, which they claim is another
18 quote, it's the JP Morgan exhibit. That's Exhibit 3. And
19 again it's a cash collateralized transaction, but put that
20 aside. It says, we are -- all three accounts have now been
21 opened. We are ready to go with the total returns swap on
22 Monday if you'd like. That's not this deal. That's a
23 different kind of hedge. And again, because KTS was looking
24 for the same transaction, if you want to make implications,
25 it's because JP Morgan couldn't come up with a valuation

1 either.

2 Now, and we -- the recipient of all three of these
3 was Bernd Kammerlander and he put in an affidavit on our
4 behalf. So one more point, so this whole notion -- so all
5 of this is perfectly consistent with KTS' positions in both,
6 that's why they put them in Switzerland. They think it's
7 helpful to their case. And as I just demonstrated, I think
8 it's helpful to our case here.

9 One final point, even if you ignore it, even if
10 these were legitimate quotes, if you look at -- and you made
11 this point last time and you were correct that there's a
12 presumptive -- there's a presumption that the markets act
13 right and if there's publicly traded stock, you can get a
14 value. And it would be our burden to overcome that and
15 that's all fair.

16 There's an exception if there's a dysfunctional
17 market and that's what we were going to try to prove one or
18 the other, but here's the point. One of the only cases, if
19 not the only case, to talk about 562 in any length is the
20 American Home case, Third Circuit opinion. And the issue
21 was -- both sides conceded it was a dysfunctional market.
22 So the issue was is there any commercially reasonable
23 determinant way to value a mortgage backed security
24 portfolio without a functional market. And in that
25 particular case, the Court found, yeah, you could do a

1 discounted cash flow, because it's a series of mortgages,
2 there's a finite period of time, a known cash flow, so you
3 can apply whatever discount. That's legit. But the Court
4 recognized, both the lower court and the Third Circuit,
5 quote, "Where the market is dysfunctional, it may be
6 difficult or impossible to use a market price to assign
7 value to an entire asset or asset pool in a single day..
8 because the nature of the market at a given time would
9 result in having to sell or liquidate the asset in a
10 commercially unreasonable manner." Close quote.

11 And the Third Circuit in that same vein said it is
12 again you're starting point is the market. Quote, "It is
13 only -- and this is for purposes of 562. "It is only when
14 the market is dysfunctional and the market price does not
15 reflect an assets worth should one turn to other
16 determinants of value." Close quote.

17 So the only or certainly the most convincing case
18 law in 562, does not necessarily deem market price is
19 controlling. That's the whole point about giving somebody
20 the opportunity. And that's why 562 says, the presumption
21 is the determination date and if you couldn't come up with a
22 commercially reasonable determinant value, the first date
23 thereafter. That's what this whole litigation was going to
24 be about. That's why you wanted discovery. That's why you
25 wanted expert testimony. Notwithstanding the steep hill

1 that you acknowledge we have.

2 So to put in three valuations, two of which are
3 dead wrong and actually show you couldn't value it, and to
4 put in one that was a collateralized transaction which KTS
5 could not do and then to have to suggest that that's
6 conclusive of anything and that, quote, no reasonable person
7 could ever argue that it's not these valuations. It's just
8 not right. It's wrong. And there's no evidentiary record
9 to call out to any other conclusion, whatever preconceptions
10 LBHI may have. That's what the litigation was going to be
11 about before u. That's what we were going to brief and have
12 experts and the whole nine yards. But we decided -- KTS
13 decided to focus on what it considers the underlying,
14 obviously primary claim. And to free LBHI from any
15 affirmative liability and to free up the reserve. I thank
16 you for listening.

17 THE COURT: I've listened, but I'm not done
18 listening.

19 MR. ZIMMERMAN: Oh, I'm sorry. I apologize.

20 THE COURT: I have a couple of more questions for
21 you.

22 MR. ZIMMERMAN: Uh-huh.

23 THE COURT: One of which relates to your last
24 argument, which in effect goes to the very merits that you
25 said I shouldn't be considering. So I find it somewhat

1 curious that you decided to close by arguing that there was
2 something potentially reasonable to have been presented here
3 had you not withdrawn your claim. And you're in effect
4 using that as a reason why I should not condition withdrawal
5 of your claim on preclusive relief in favor of Lehman. I
6 assume that's the reason that you made that argument.

7 MR. ZIMMERMAN: No. Just to be clear, as I said
8 before I started that argument, while it's not relevant, the
9 reason I made the argument was because they are suggesting
10 as part of the atmospherics that those valuations were
11 hidden --

12 THE COURT: They're suggesting that you're a
13 nefarious -- your client is nefarious and scheming and
14 litigious to a fault.

15 MR. ZIMMERMAN: But -- well I addressed that
16 before. But specifically with respect, I'm talking about
17 the -- that's one of the disparagements. The other one was
18 --

19 THE COURT: Shall I come up with some other
20 disparagements?

21 MR. ZIMMERMAN: No, no. I just want to -- I just
22 want to explain what I just said, which is what the lead in
23 was.

24 THE COURT: That's really what my question is, why
25 were you making that argument?

1 MR. ZIMMERMAN: Because the notion -- if they want
2 to -- if they want to impact your decision based on an
3 atmospheric argument, I wanted to clear the atmosphere, so
4 that whatever decision you make is on a justified proven
5 record. And the point of that was the notion that KTS hid
6 the valuations when we refer to it in our papers, that those
7 valuations somehow show again atmospherically that KTS is
8 taking inconsistent positions before you and Switzerland and
9 that KTS is somehow trying to play one court off the other.

10 That atmospheric, which should have no bearing on
11 this is false. And what I tried to explain by going through
12 it is not to litigate this. I'm not an expert, obviously
13 that's not -- unlike -- that's not evidence that's been
14 subjected to cross-examination. And it's not been vetted,
15 but it does go to this atmospheric point that they keep
16 throwing at you in the absence of any law that supports
17 their position. That's why I made that -- that's why I
18 refer to the valuations.

19 THE COURT: Well there's more to the atmospherics
20 which you haven't dispelled and I want to give you an
21 opportunity to dispel it now. And that is apart from the
22 merits of any argument that might be made under Section 562
23 or applicable English law with regard to the proper
24 interpretation of the underlying ISDA agreement that your
25 client is involved in activities in Switzerland and here

1 that are designed to put maximum commercial and economic
2 pressure on a settlement that is demonstrably beneficial to
3 LBHI and frankly, also to all creditors of LBF, a settlement
4 that has been approved here and approved there. And so part
5 of the atmosphere is that your client is taking a
6 questionable legal position for purposes of extracting value
7 now at a time when there is maximum leverage as against that
8 settlement. That atmosphere is still in the room. And
9 you've said nothing to dispel it.

10 MR. ZIMMERMAN: The only -- here's all I can say.
11 And the Harrowlinda (ph) affidavit makes reference to this
12 too.

13 THE COURT: That affidavit, if I'm remembering
14 correctly said, well we're the only really unhedged
15 creditor, whatever that means and I don't know what that
16 means.

17 MR. ZIMMERMAN: Okay.

18 THE COURT: And I don't know what your real
19 motivation is and I assume it's purely economic, but it's
20 also designed to delay the resolution of a very significant
21 settlement to the detriment -- economic detriment of many
22 other creditors, which makes you appear to be standing in
23 front of a tank and stopping it.

24 MR. ZIMMERMAN: Here's what I know.

25 THE COURT: I'm making you seem heroic with that

1 image, by the way.

2 MR. ZIMMERMAN: Oh, thank you. But so long as the
3 train doesn't run me over, I don't mind being a hero.

4 Let me tell you what I know and then you're going
5 to have to draw whatever inference you want, because the
6 record is what it is. I have no doubt -- you approved it --
7 the settlement is being in the best interest of LBHI. I'm
8 not touching that. It's been approved by the Court in
9 Switzerland.

10 THE COURT: By the way, let me stop for a second.
11 Was there some reason why you did not object to the
12 settlement here?

13 MR. ZIMMERMAN: I think -- well I believe the
14 procedure set up for objecting to the settlement was as
15 follows. Settlement gets published, whatever. Creditors
16 committee I think had to approve it. You then publish it
17 and then they set up the settlement -- sorry the objection
18 vehicle that you can appeal to the financial institution,
19 FINRA I think it's called in Switzerland.

20 THE COURT: You may be misunderstanding the
21 question. I don't question what you're doing in Switzerland
22 in terms of the procedure.

23 MR. ZIMMERMAN: Oh.

24 THE COURT: I'm questioning why, if you know, your
25 client didn't step up to oppose approval of the settlement

1 here?

2 MR. ZIMMERMAN: Oh, I'm sorry. Sure. I can -- I
3 mean, I can reason why, which is as follows.

4 THE COURT: But do you know?

5 MR. ZIMMERMAN: No. I never discussed it, but I
6 think my reasoning is compelling so let me just give it and
7 I --

8 THE COURT: Okay.

9 MR. ZIMMERMAN: Their position, by the way, is not
10 that the settlement -- that LBF gave up too much value to
11 LBHI full stop. Maybe that's right, maybe that's not.
12 Naturally, you're not going to come to a bankruptcy court --
13 number one, they're a creditor, fundamentally the primary
14 claim as we've always said is against LBF. That's where
15 they think they're going to prevail. That's where they
16 think there's a significant pay out for creditors. And
17 that's where they're hurt most if LBF gives up too much
18 value.

19 They're not -- the -- to come to you, Judge and
20 say we object to the settlement not because it gives -- it's
21 not in LBHI's best interest, it is. In fact, I think their
22 position is too good. It's hurting LBF in their Swiss
23 proceeding. What does that have -- I don't -- I would --
24 not that I was involved, but it wouldn't dawn on me to come
25 to this Court to object either. I would go to Switzerland

1 because that's the entity that the client believes is giving
2 up too much value.

3 THE COURT: Well, I don't mean to break in, but at
4 the time of approval of the settlement, I approved it both
5 in respect of the LBHI case and the Chapter 15 case for LBF.
6 And LBF's foreign representative was here as an advocate for
7 that settlement. You had a perfect opportunity or at least
8 your client did to stand up and be counted then, but didn't.

9 And so it leads to the conclusion, not necessarily
10 the only conclusion, that part of what is going on here is a
11 gaming of that settlement there at a time when you have
12 increased potential leverage unrelated to the merits of your
13 claims, but rather related to the holdup value associated
14 with objecting. And that's the negative atmosphere and
15 that's what you have not dispelled.

16 MR. ZIMMERMAN: I've told you everything I know.

17 THE COURT: Okay.

18 MR. ZIMMERMAN: I haven't discussed this. I'm not
19 going to speculate to you, Judge. It's not fair to either
20 of us. I've told you everything I know. The rationale I
21 assumed happened. I was not involved. But I continue to
22 believe that the procedure was to object to try to get an
23 appealable order from FINRA, that's what they're doing. And
24 if it turns out under Swiss law, they're as frivolous as
25 LBHI says, presumably there's a heavy price to pay. But I

1 can't give you any more information that I just don't know.

2 THE COURT: Do you know whether or not there is a
3 bonding requirement associated with taking an appeal from an
4 appealable FINRA order?

5 MR. ZIMMERMAN: I believe -- what I said last time
6 and this was fresh on my mind last time. The answer I
7 believe is yes and there was a dispute as to the amount. I
8 don't know what -- and that issue on the amount or that
9 dispute when we were here last time had been or was about to
10 be joined and they were expecting a decision. So I think
11 the answer is yes. I think there is a dispute as to the
12 amount, but if I say anymore, I'm going to be speaking --
13 that's all I know.

14 THE COURT: Okay. And this is now my final
15 question and I'm picking up something that you do on
16 occasion, which is say that you're about to make a final
17 point and then there are three or four that follow.

18 MR. ZIMMERMAN: Yeah. Fair enough.

19 THE COURT: But my final question is this and it's
20 in the category of if you know. So if the answer is you
21 don't know, it becomes a very short answer. Do you know if
22 there are any procedures available in the Swiss proceeding
23 to materially expedite the resolution of that proceeding as
24 it relates to the merits of your objection?

25 MR. ZIMMERMAN: I do not know.

1 THE COURT: That's fine. Thank you.

2 MR. ZIMMERMAN: Thank you, Judge.

3 MR. TAMBE: Your Honor, if I may just confer on
4 the final question you asked to see if I have an answer for
5 you -- your question.

6 (Pause)

7 MR. TAMBE: Good morning, Your Honor. Jay Tambe
8 on behalf of the Debtor. Let me start by just answering the
9 questions Your Honor posed to Mr. Zimmerman at the end
10 there. There is a bonding requirement. We understand that
11 the bond has been set at a relatively low amount of Swiss
12 francs, 10,000. It could be raised up to 50,000 Swiss
13 franc,, but that's my understanding. And I don't know that
14 first hand. That's based on information I just received.

15 Two, we don't believe that there is any procedure
16 for materially expediting the objection that has been filed
17 by the KT entities in Switzerland, so it's going to take a
18 while.

19 THE COURT: What's the consequence, if you know,
20 the financial consequence of a party like KTS pursuing an
21 appeal unsuccessfully that results in demonstrable material
22 losses to LBHI and to LBF, is there recourse?

23 MR. TAMBE: I don't know the answer to that, Your
24 Honor. Whether there's any kind of a cost or a sanction
25 associated with that type of a tactic by someone like KTS in

1 the Swiss proceedings. I don't know the answer to that. I
2 don't know if we have a remedy for the delay and the
3 prejudice that would be caused.

4 THE COURT: Okay. I'm sure someone at some point
5 will consider that and someone at some point will consider
6 whether KTS and the Tschira entities are embarking on a high
7 risk strategy, but that's not for me to decide today.

8 MR. TAMBE: So let me start with where I think
9 there is at least some agreement. There's some agreement
10 that at this juncture of the case, the claims cannot be
11 withdrawn except for an order by this Court. And this Court
12 has discretion in fashioning the terms and conditions upon
13 which such a withdraw would be conditioned or concluding in
14 the alternative that the claim should not be permitted to be
15 withdrawn so that we in fact do go to a hearing, which was
16 to be done on an expedited basis in any event.

17 Clearly, you have two very differing views of what
18 an appropriate order should look like. They have a bare
19 bones order that says, claims are dismissed prejudice except
20 where they're not. And just taking that order at face
21 value, we clearly have objections with a notion that there
22 is a dismissal with prejudice except where it's not. And
23 the two exceptions are fairly significant.

24 THE COURT: Mr. Tambe let me ask you the very same
25 question that I started with when Mr. Zimmerman was making

1 his presentation, which is in what way, if at all, would
2 LBHI be prejudiced if I were to enter a bare bones order
3 that was even more bare bones than the order proposed by KTS
4 and simply said, ordered that proofs of claim numbers 32395
5 and 22671 are withdrawn with prejudice period and the rest
6 of the proposed order doesn't appear, except in the
7 imagination of KTS?

8 MR. TAMBE: Your Honor, the answer to that
9 question would be if all I was concerned with -- if all that
10 LBHI was concerned with was purely U.S. proceedings where
11 the only folks who would ever look at that order or have to
12 pass on what that order means were juris who were intimately
13 familiar with U.S. procedure and what it is, I may not press
14 my point as hard as I am pressing it.

15 The reason we think more needs to be said is
16 because a withdrawal with prejudice means something special
17 under U.S. jurisprudence, which is not captured just by
18 those words and certainly to a judge who is sitting half a
19 world away who sees for example a transcript where this
20 Court focused on 562 and the 562 aspects, that judge may
21 well conclude following Mr. Zimmerman's lead, that all that
22 was before this Court and all that could have been
23 determined or was determined were 562 issues. No other
24 claims or issues were ever presented to this Court. And
25 that I think would fundamentally mischaracterize and

1 misstate the nature of both what the claims were, what
2 claims were filed and what it means to withdraw those claims
3 with prejudice.

4 A withdrawal of claims with prejudice is the
5 functional equivalent of a Rule 41 dismissal with prejudice.
6 And the cases are clear and I think there's no disagreement
7 that you look to the Rule 41 cases for guidance on how Rule
8 3006 ought to be construed. And under Rule 41, if you have
9 a dismissal with prejudice, it's not taking the parties back
10 to the status exactly. It's actually saying these claims
11 have been resolved on the merits against the Plaintiff.
12 It's res judicata as to all claims that were filed or that
13 could have been filed.

14 We don't even need to talk about what claims could
15 have been filed. Let's just focus on what claims were
16 filed. I don't think there's any dispute here that the
17 claim that was filed was premised on a contract law
18 question, an interpretation of contract law. What do these
19 master agreements mean? What does it mean to value those
20 agreements as of a particular date?

21 You don't need to consider our declarations or the
22 valuations or any of that. By withdrawing their claims with
23 prejudice, what they are saying in a U.S. Court is the
24 merits of those claims have been decided and they've been
25 decided against us. That's what we're seeking in the

1 findings of fact and conclusions of law. What we're seeking
2 is an explication by this Court that when there is a
3 withdrawal with prejudice, here is what it means. It means
4 that the claims that you were pursuing in this Court have
5 been decided against you. Not because they were actually
6 litigated, but because that is the legal equivalent, that is
7 the legal import of what it means to withdraw with
8 prejudice. That's why we have the set of findings of fact
9 and conclusions of law.

10 Now, whether that has any collateral estoppel
11 effect in Switzerland, we are not asking you to speak to at
12 all. We think it's appropriate for a Swiss court to decide
13 whether or not that has any collateral estoppel effect.
14 Certainly if the Court wants to go further and believes as
15 an exercise of its jurisdiction there are additional
16 clarifications and conditions that the Court believes are
17 necessary, we certainly would not object to that. But at a
18 minimum, I think we need some clarity as to what it means to
19 withdraw claims with prejudice. That's what's behind the
20 findings of fact and conclusions of law.

21 We're not asking you to make evidentiary findings
22 based on the affidavits we've submitted. What we're asking
23 you to do is find as a legal matter, that is the conclusion,
24 that is the effect of the step they have taken, which is the
25 withdrawal with prejudice.

1 Now, why have we provided you with the
2 declarations? We've provided you with the declarations to
3 make the point that I think Your Honor picked on. We don't
4 think there was any reasonable basis from back in 2009 for
5 these claims ever to have been filed.

6 There's a point that's made in the reply
7 submission that I wanted to focus on. And it is on
8 paragraph 25 of the reply papers served by KT. And they
9 declare indeed the so called valuations demonstrate that it
10 was not possible to obtain a quote for a replacement
11 transaction as of September 15, 2008.

12 If you look at the Mediobanca valuation if it was
13 anything, it was a quote, for a replacement transaction as
14 of September 15th, 2008. Their quarrel with that quote is
15 simply that they could not actually enter into that
16 transaction, but there is no dispute that on its face, what
17 that was a quotation from a bank to enter into a replacement
18 transaction as of September 15th, 2008. There's no two
19 things about it. They may call it something else, but on
20 its face, that's what it is.

21 And certainly under both 562 and English law, the
22 ISDA master agreement and what the ISDA master agreement
23 requires, that values the transaction as of the early
24 termination date. And they've had that piece of paper in
25 their possession since September 19th.

1 This maybe should simply have never been filed and
2 they only thought about withdrawing it when their first
3 tactic failed, which is have this Court basically say, I'm
4 not going to touch the issue until the Swiss courts are done
5 with it. That was our first response when we put in our
6 objection. Their first response was, this Court needn't get
7 involved in it. All these issues are being resolved in
8 Switzerland.

9 It's only when that tactic failed and when this
10 Court said, no we're going to have an evidentiary hearing,
11 we're going to have discovery and we're going to get to the
12 bottom of this issue and when we said, okay we want a trial
13 on these issues, we want all the issues tried.

14 I don't think there was anything said at the June
15 13th hearing that said that there would be a truncated trial
16 of only some issues and not other issues. It's entirely
17 possible that your court -- that the Court could have
18 limited its ruling to just 562 issues. But in terms of the
19 issues that were going to be developed by the parties, they
20 certainly include an English law as to the contract, the
21 interpretation of English law and the effect of English law
22 and the validity of these quotations and what effect that
23 had on the agreement and 562.

24 THE COURT: I expect by the way, Mr. Tambe, not
25 that it matters, that the trial or hearing, however long it

1 might take, of the issues raised would include applicable
2 English law as well as 562 largely because during his
3 argument on the stay, Mr. Zimmerman focused on applicable
4 English law as being appropriate law for me to consider and
5 in effect the equivalent of considering state law under a
6 state law governed ISDA. This is English law under an
7 English law governed ISDA. And in the sense that Section
8 562 may or may not be considered in a vacuum -- and that
9 legal question hasn't been answered -- I would expect that
10 English law questions would be presented. But this is an
11 entirely theoretical construct. We don't actually need to
12 get into any of this now. Although I know Mr. Zimmerman did
13 in his argument.

14 This argument in connection with a motion to
15 withdraw claim has become in effect, a derivative for the
16 litigation that might have been pursued if the claim hadn't
17 been withdrawn.

18 MR. TAMBE: So I'm not going to belabor the point,
19 Your Honor. Suffice to say that the reason we have in our
20 proposed order those findings of fact and conclusions of
21 law, are not to suggest that this Court has considered or
22 tried those issues, but that's the legal effect if they
23 withdraw with prejudice of the claims they presented.

24 THE COURT: Okay.

25 MR. TAMBE: There are two other aspects to the

1 order that we seek as terms and conditions for the withdraw
2 with prejudice. This has certainly been I think an
3 expensive undertaking for the estate. It wasn't like they
4 played out this tactic when we first filed the objection in
5 March of this year, nor when we put in the more detailed
6 supplemental objection laying out precisely the reasons why
7 we believe this was an improper claim and the claim should
8 be expunged. They stuck around and they fought it and they
9 argued that in fact it should remain alive, but stayed.

10 After we left this Court on June 13th we engaged
11 in meet and confers about the schedule. And by any stretch,
12 it was a schedule that was going to be very tight and very
13 accelerated. That required us to go ahead and hire experts
14 to prepare the legal submissions to prepare a single
15 discovery request which we served on them, which they found
16 to be overly burdensome. But those costs were incurred by
17 the estate. And as part of the order we would seek
18 reimbursement of those costs and expensive, both attorneys
19 fees as well as expert fees.

20 We'd also seek discovery. The one discovery
21 request we have served on KTS is give us all of the
22 valuation information you have. We see bits and pieces of
23 it. We see some that you submit here. We see some that
24 you've submitted in Switzerland. What else do you have?
25 How many other valuations did you do between September and

1 October of 2008 or thereafter? The valuation that they
2 ultimately hang their hat on is a December 1, 2008
3 valuation. So get us all the valuation information that you
4 have, that your advisors have. They've been through several
5 advisors, give us that basic information. It's a single
6 documents request. I think it's again fair as a condition
7 given the atmospherics and given everything else that's
8 going on here. That while they are subject to the Court's
9 jurisdiction, I think it's within the Court's power to say
10 they should comply with that minimal discovery request.

11 THE COURT: Can I break in and ask you a question
12 I should have raised with Mr. Zimmerman but didn't and I'm
13 going to ask him the same question during his further
14 commentary on this point. And you said, quote, "while KTS
15 is still subject to this Court's jurisdiction", close quote.

16 Assuming that I enter an order in one form or
17 another authorizing the withdrawal of claim numbers 32395
18 and 22671 absent some further agreement, is it your position
19 that KTS and Tschira entities are no longer subject to the
20 Bankruptcy Court's jurisdiction?

21 MR. TAMBE: I don't definitely know the answer to
22 that, but that's certainly a risk we fear, that once they
23 have obtained an order giving them withdraw with prejudice,
24 they will take the position that they are no longer subject
25 to this Court's jurisdiction.

1 THE COURT: And assuming that is the case, in what
2 forum, if any would LBHI pursue affirmatively relief against
3 these entities?

4 MR. TAMBE: There's at least one conceivable
5 avenue for affirmative relief and it hasn't really been the
6 subject of any of the briefing.

7 The week before the LBHI Bankruptcy filing, the KT
8 entities demanded and received 100 million Euros in
9 additional collateral. Not tied to the valuation of the
10 trades, but just as a additional security that they demanded
11 from the Lehman entities.

12 Some time ago in light of potential statutes of
13 limitation, the parties had entered into a tolling
14 agreement. I believe last week we terminated that tolling
15 agreement and one of the avenues that we are considering is
16 whether we will pursue either LBHI or LBHI or LBSF or some
17 combination would pursue an action against the Klaus Tschira
18 entities for return of that 100 million in collateral and as
19 potentially a preference action.

20 So that is one specific potential avenue of relief
21 that I can think about that we might consider pursuing.

22 THE COURT: And is that an action that would be
23 brought in this Court?

24 MR. TAMBE: We would certainly intend to bring it
25 in this Court, Your Honor.

1 THE COURT: All right. And if an action were
2 brought in another court, I presume there are other courts
3 of competent jurisdiction in Europe where this family of
4 companies does business and will be subject to jurisdiction
5 and they might even be subject to jurisdiction here. I'm
6 not commenting.

7 MR. TAMBE: And I don't want to rule out one way
8 or the other. I think they certainly would be subject to
9 jurisdiction here given that they've come here and brought
10 their claims here. They've also consented to jurisdiction
11 in the Courts of England and Wales pursuant to the ISDA
12 master agreement. A forearm they seem to have seriously
13 avoided for the determination of any of their so called
14 rights under the ISDA master agreement.

15 THE COURT: But to be clear you are not asking as
16 a condition of the order that there be an agreement on the
17 part of the withdrawing claim holders to ongoing
18 jurisdiction to the Bankruptcy Court with respect to any
19 affirmative claims that your client may have?

20 MR. TAMBE: We have not sought that as part of our
21 proposed order, but should the Court believe that it's a
22 proper term and condition to be included, we would certainly
23 welcome it.

24 THE COURT: Okay. It's as to that question that
25 I'd like Mr. Zimmerman to comment later.

1 (Pause)

2 MR. TAMBE: The point we've made a couple of times
3 and this is I think my last observation that in a sense, we
4 have not cited any case to Your Honor that provides for the
5 relief that we are seeking. And my response to that is
6 while what we are seeking may be unprecedented, it is not
7 unprincipled. This wouldn't be the first time in the Lehman
8 Brothers Bankruptcy that this Court has had to rule on
9 issues that have not previously been ruled on by other
10 courts.

11 But the principals that we're relying on, Your
12 Honor, are rock solid principles. They go to Rule 41, what
13 does it mean to dismiss with prejudice? What does it mean
14 for us to be subject to this continuing threat to the
15 settlement that this Court has already approved? And how
16 can we be properly protected in this cross border scenario.
17 Where it may be perfectly understood what res judicata and
18 withdraw with prejudice means in the U.S. but it could be
19 subject to misinterpretation or misapprehension on the other
20 side of the pond. And we simply want an order that spells
21 out exactly what it is that a withdraw with prejudice gives
22 us.

23 I'm happy to answer any other question the Court
24 may have.

25 THE COURT: I don't have any others right now.

1 MR. TAMBE: Thank you, Your Honor.

2 THE COURT: Mr. Zimmerman, do you want to speak to
3 the jurisdictional question? And you can also respond to
4 other matters that you think appropriate to comment on.

5 MR. ZIMMERMAN: Thank you. Last week when LBHI
6 terminated that tolling agreement we had assumed that they
7 would be filing with a preference for whatever theory they
8 had on that \$100 million amount that Mr. Tambe mentioned and
9 without having discussed it with the client, I had assumed
10 that that would be heard in this Court. So I think -- I
11 hope that answers the question.

12 With respect to -- the only other point I'll make
13 with respect to the acknowledgement that there's no
14 precedent on this, but that you've had occasion in the past
15 in the Lehman Bankruptcy Case to rule on issues of first
16 impression, that's absolutely true. But there is a -- there
17 is plenty of case law, unlike the cases you had, there is
18 plenty of case law in Rule 41 and 3006, plenty of times when
19 defendants have tried to object to withdraws of claims by
20 conditioning them on forfeiture of rights against third
21 parties and they all come out our way. So subject to any
22 other questions you have, that's the only thing I need to
23 say to Mr. Tambe.

24 THE COURT: Just a further question on retained
25 jurisdiction and that is do you have a position one way or

1 the other as to the impact on this Court's jurisdiction over
2 your client of your withdraw of proofs of claims with
3 prejudice -- in other words, to what extent, absent some
4 further litigation, does LBHI have a right to seek
5 affirmative relief with respect to the very same
6 transactions that were the subject of your proofs of claim
7 after the withdrawal of those proofs of claim?

8 MR. ZIMMERMAN: As I stand here I don't, but I can
9 let you know KTS' position in 24 hours. I don't know what
10 their contacts are with the U.S. separate from the
11 bankruptcy and whether it be an agreement -- whatever the
12 answer -- the legal answer to the question is, whether
13 there'd be a willingness to submit to the continuing
14 jurisdiction of this Court even with the claim withdrawn, I
15 can advise you when I get instructions in 24 hours.

16 THE COURT: Okay. Thank you.

17 Is there anything more on this?

18 MR. TAMBE: No, Your Honor.

19 THE COURT: This is a very interesting and as the
20 parties have acknowledged, unprecedented attempt to withdraw
21 a very significant claim against LBHI. And it is very
22 unusual in my experience for the voluntary withdrawal of a
23 \$600 million claim to result in such robust and strenuous
24 opposition on the part of the Debtor that notionally is
25 benefitted by the withdrawal of that claim.

1 In effect, we are arguing here, both in the papers
2 and in oral argument about matters that are not presently
3 pending before the Court. If you look at this in the most
4 simple terms, KTS known as the Tschira entities along with
5 its affiliate KG are seeking to withdraw claims rather than
6 litigate those claims to conclusion here.

7 The fact that they have chosen to fold their tents
8 indicates a form of foreign selection on their part. I
9 conclude that they have determined that they are better off
10 arguing issues relating to the replacement of the
11 transactions that are the subject of these claims in
12 Switzerland in the context of objecting to the LBF
13 settlement there, rather than litigating those very same
14 issues here. And frankly, that's their right.

15 They voluntarily submitted to this Court's
16 jurisdiction with respect to the guarantee claims when they
17 filed those claims in 2009. And after seeing the atmosphere
18 in this courtroom, particularly comments that I made in
19 reference to section 562, I believe they decided they were
20 better off simply moving on.

21 Regardless of their motivations, they have the
22 right, subject to appropriate conditions to withdraw proofs
23 of claims 32395 and 22671 after issue has been joined.

24 LBHI seeks to elaborately condition the withdrawal
25 of those claims upon a set of findings of fact and

1 conclusions of law that potentially could have preclusive
2 impact upon the rights of the Tschira entities in the Swiss
3 proceedings. In effect, LBHI seeks to convert a withdrawal
4 of a claim into the functional equivalent of a detailed
5 adjudication on the merits.

6 I am not prepared to do that and will not do that.
7 But what I will do is enter a form of order substantially
8 along the lines proposed by the Tschira entities with these
9 amendments.

10 As I foreshadowed in my questioning, the order
11 will end with the third decretal paragraph which states,
12 ordered that proofs of claim numbers 32395 and 22671 are
13 withdraw with prejudice and the sentence will stop there.
14 There will be a period inserted after the words with
15 prejudice. And the exceptions will all be deleted.

16 There will be a further decretal paragraph and it
17 is further ordered that the Tschira entities shall continue
18 to be subject to this Court's jurisdiction with respect to
19 any affirmative claims of the Debtors or words to that
20 effect.

21 I believe that it is appropriate for the Swiss
22 court to have complete discretion in determining the manner
23 in which this order impacts claims and offenses in the Swiss
24 proceeding. The Tschira entities will be free to argue as
25 to the legal consequences of having withdrawn their claims

1 here with prejudice. And LBHI and LBF similarly will be
2 free to argue as to the appropriate legal consequences
3 associated with the withdrawal of these proofs of claim.

4 Finally, I will make an observation that does not
5 fit neatly within this ruling with respect to the withdrawal
6 of these two proofs of claim. I am frankly concerned that
7 the Tschira entities are engaged in legally permissible
8 activity that is also highly undesirable from the
9 perspective of both LBF and LBHI. And more importantly,
10 from the perspective of parties in interest that have
11 supported and are benefitted by the settlement between LBHI
12 and LBF that was approved by this Court and the Swiss court.

13 I encourage the parties to explore economic
14 solutions to this dispute that makes sense relative to the
15 delay and expense associated with the Swiss litigation. It
16 would be highly desirable for the parties to reach an
17 accommodation with each other before September 30.

18 To the extent that this Court can be helpful in
19 supervising settlement discussions between the parties, I
20 make myself available, particularly since the disputes in
21 question are to be adjudicated in the Swiss court and not
22 here.

23 I ask Mr. Zimmerman to report to my chambers
24 before the close of business tomorrow as to whether his
25 client will accept the condition that I have imposed on the

1 withdrawal of these claims, namely that the Tschira agree to
2 be subject to the Bankruptcy Court's jurisdiction with
3 respect to any affirmative claims of LBHI.

4 That's the ruling of the Court. Thank you very
5 much.

6 MR. TAMBE: Thank you, Your Honor.

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Motion of Withdraw Claim
Numbers 32395 and 22671 Pursuant
to Rule 3006 of the Federal Rules of
Bankruptcy Procedure [ECF No. 38809]

C E R T I F I C A T I O N

I, Melissa Looney, certify that the foregoing transcript is
a true and accurate record of the proceedings.

Melissa
Looney

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